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Paper No. 8

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**COPY MAILED**

**JUN 06 2002**

**OFFICE OF PETITIONS**

In re Application of :  
Dideriksen, Feller, Harris, Novak, :  
and Olson : DECISION REFUSING STATUS  
Application No. 09/817,901 : UNDER 37 CFR 1.47(a)  
Filed: 26 March, 2001 :  
Attorney Docket No. MS1-788US :

This is in response to the renewed petition filed under 37 CFR 1.47(a) on 25 March, 2002.

The petition is again **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

**FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.**

Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 26 March, 2001, without an executed oath or declaration.

Accordingly, on 29 May, 2001, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, requiring, *inter alia*, the statutory basic filing fee, additional claim fee(s), a signed oath or declaration, and a surcharge for their late filing. A two (2) month period for reply was set. The petition filed on 29 November, 2001, was dismissed on 28 February, 2002.

Petitioners again assert that inventor Feller was requested via email to sign the declaration, but has failed to do so. The

petition is accompanied by an unexecuted declaration apparently naming Feller as the sole inventor.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventor.

The petition lacks item (1) and (2). In regards to item (1), petitioners have not shown that Feller was ever sent or presented with a copy of the application as filed (specification, including claims, drawings, if any, and the declaration). Petitioners **must** provide evidence that a copy of the application papers was actually sent or given to the non-signing inventor. Petitioners may show proof by providing a copy of the cover letter transmitting the application papers to the non-signing inventor or details in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

Likewise, before a *bona fide* refusal to sign the declaration can be alleged, petitioners must show that a copy of the application papers (specification, including claims, drawings, if any, and the declaration) was sent or given to the non-inventor. If the inventor refuses in writing, petitioners must submit a copy of that written refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of fact.

In regards to item (2), the declaration submitted with the renewed petition is deficient in that it does not reflect the proper inventive entity. The declaration submitted with the renewed petition lists Feller as the sole inventor. Petitioners must provide a new oath or declaration in compliance with 37 CFR 1.63 and 1.67 including the citizenship, residence, and mailing address for each inventor. The oath or declaration must also be signed by each of the signing inventors on behalf of themselves and the non-signing inventor.

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Commissioner for Patents  
                  Box DAC  
                  Washington, D.C. 20231

By FAX:           (703) 308-6916  
                  Attn: Office of Petitions

By hand:           Crystal Plaza Four, Suite 3C23  
                  2201 S. Clark Place  
                  Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.



Douglas I. Wood  
Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy